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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/728,167

12/04/2003

Gary M. Bardos

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REISING, ETHINGTON, BARNES, KISSELLE, P.C.

P O BOX 4390

TROY, MI 48099-4390

EXAMINER

TSOY, ELENA

ART UNIT

PAPER NUMBER

1762

MAIL DATE

DELIVERY MODE

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/728,167

**Applicant(s)**

BARDOS ET AL.

**Examiner**

Elena Tsoy

**Art Unit**

1762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Admitted prior art in view of Blue (US 6,162,496) and Landry (US 2,742,185).

Applicants state in the Background of Invention that in all known processes and equipment for coloring wood chips, the liquid dye is applied either to the finished ground wood chips as they are augered along a screw conveyor into a pile, as disclosed in U.S. Pat. No. 5,358,738, or another approach is to add both dry colorant and water combinatively into the grinding stage of a tub enclosed hammer mill or like mechanism during which the chips are colored. Finally, another known approach is to add dry colorant to a pile of ground wood chips and then to mix them together manually, such as by repeatedly scooping and dumping the material with a front end loader, a pitchfork, or the like, after which the material is introduced to a secondary grinding operation (See specification, P3). Thus, Applicants admitted that it is known to add dry colorant and water to a pile of *ground* wood chips and then to mix them together manually, after which the material is introduced to a *secondary* grinding operation.

Applicants further state that these known techniques have difficulty producing a final end product with consistent, uniform color, having no good way of metering the colorant and thus applying too much, too little or inconsistent distribution of coloring throughout a batch. In other

Art Unit: 1762

words, Applicants state that it was not known to carry out a process of grinding and coloring wood material continuously using mechanical and automatic means.

However, it is well settled that broadly providing an automatic (i.e. **automating** a manual activity) or mechanical means to replace a manual activity which accomplished the same result is not sufficient to distinguish over the prior art. It is also well settled that it is within the level of ordinary skill to operate a process **continuously**. In re Dilnot, 319 F.2d 188, 138 USPQ 248 (CCPA 1963) (Claim directed to a method of producing a cementitious structure wherein a stable air foam is introduced into a slurry of cementitious material differed from the prior art only in requiring the addition of the foam to be continuous. The court held the claimed continuous operation would have been obvious in light of the batch process of the prior art.). See MPEP 2144.04.

Therefore, claimed mechanical devices and means including hopper for maintaining dry colorant, a water spigot for dispensing water, conveying mechanisms for transporting wood material before and after grinding, and other claimed mechanical devices would be within the level of ordinary engineering skill.

Note that claimed limitations relating to metering colorant and water, regulating rate of dispensing water, and providing a control system operably communicating system parts using a central processing unit to allow an operator to control the process, are conventional ways of running process **automatically**. Therefore, claimed limitations are not sufficient to distinguish over the prior art as being related to **automated continuous** process.

**Blue is applied here to show that the use of claimed mechanical devices and metering and controlling means were known in the art of coloring wood chips.** Blue teaches

Art Unit: 1762

a system having a (i) mixer defining a chamber that has an opening for inserting solid pieces therein, the chamber being in fluid communication with a conduit; (ii) a source of a liquid agent and a *metering* device to selectively provide the agent from the source to the conduit; (iii) a *water supply* coupled to the conduit; (iv) a *controller operatively coupled to the metering device* to provide a delivery signal (See column 1, lines 52-61); (v) a *control panel* indicating the *rate of colorant* delivery for adjustment by *operator* (See column 4, lines 22-36). The metering device responds to the delivery signal to adjust delivery of the agent to the conduit from a first nonzero rate to a second non-zero rate (See column 1, lines 61-64). A *conveyer* 14 is used for transporting wood chips to a mixing chamber (See column 4, lines 6-8). Controller 31 is operatively coupled to display 32, key pad 33, rotary control 34, sensor 35 and switches 36, 37, 38, and 39 to coordinate and supervise operation of delivery system 20. Controller 31 may be an electronic circuit comprised of one or more components. Similarly, controller 31 may be comprised of digital circuitry, analog circuitry, or both. Also, controller 31 may be *programmable*, an *integrated state machine*, or a hybrid combination thereof. However, preferably controller 31 is microprocessor with a known construction and has a control program loaded in non-volatile memory. See column 4, lines 47-62. By controlling the rate of delivery of colorant with control 34 to static liquid mixer 50 and maintaining a generally constant flow rate of water with flow regulator 46, a desired concentration of water based colorant mixture may be selected (See column 6, lines 7-12). This concentration, and the rate of flow of the mixture to chamber 70 of mixer 60 may be *matched* to the *rate of transport of wood chips* therethrough to optimize colorant system 10 performance (See column 6, lines 12-15). As a result, the minimum amount of water necessary to provide uniform coloration for the wood chips may be determined

Art Unit: 1762

by taking into account the absorbency of the liquid by the wood chips 12, the rate of flow of the liquid into chamber 70, and the rate of passage of wood chips 12 through mixer 60 (See column 6, lines 15-20). Notably, the rate of liquid flow can be adjusted with flow regulator 46 and with rotary control 34, and the ratio of water to colorant can likewise be adjusted to assure a concentration which will provide uniform coloration (See column 6, lines 20-24). By optimizing these amounts, the amount of liquid runoff can be minimized and this optimal performance can be reliably reproduced (See column 6, lines 24-26). Also, an adjustable flow rate and colorant delivery rate permits re-optimization of the process when various parameters change; including, but not limited to, a different colorant type, different wood chip delivery rate, or different type of wood chips (See column 6, lines 26-31).

Landry is applied to show that the rate of flow of *water* from a *spigot* and the rate of feeding of the particles such as wood flour (See column 5, lines 6-7) through the apparatus can be *controlled* (See column 6, lines 4-14).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elena Tsoy whose telephone number is 571-272-1429. The examiner can normally be reached on Monday-Thursday, 9:00AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Meeks can be reached on 571-272-1423. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

Art Unit: 1762

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ELENA TSOY  
PRIMARY EXAMINER  
*ETsoy*

Elena Tsoy  
Primary Examiner  
Art Unit 1762

June 9, 2007